

§ 286.45

(2) Count withdrawals as resources in determining eligibility, or

(3) Take such other steps as the Tribe has established in its Tribal plan or written Tribal policies to deter inappropriate use.

§ 286.45 What uses of Tribal Family Assistance Grant funds are improper?

(a) A Tribe may not use Tribal Family Assistance Grant funds to provide assistance to:

(1) Families or individuals that do not otherwise meet the eligibility criteria contained in the Tribal Family Assistance Plan (TFAP); or

(2) For more than the number of months as specified in a Tribe's TFAP (unless covered by a hardship exemption); or

(3) Individuals who are not citizens of the United States or qualified aliens or who do not otherwise meet the definition of "eligible families" at § 286.5.

(b) Tribal Family Assistance Grant funds may not be used to contribute to or to subsidize non-TANF programs.

(c) A Tribe may not use Tribal Family Assistance Grant funds for services or activities prohibited by OMB Circular A-87.

(d) All provisions in OMB Circular A-133 and in 45 CFR part 92 are applicable to the Tribal TANF program.

(e) Tribal TANF funds may not be used for the construction or purchase of facilities or buildings.

(f) Tribes must use program income generated by the Tribal Family Assistance grant for the purposes of the TANF program and for allowable TANF services, activities and assistance.

§ 286.50 Is there a limit on the percentage of a Tribal Family Assistance Grant that can be used for administrative costs?

(a) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the first year of a program's operation based on the applicant's proposed administrative cost allocation. No Tribal TANF grantee may expend more than 35 percent of its Tribal Family Assistance Grant for administrative costs during the first year.

(b) ACF will negotiate a limitation on administrative costs with each Trib-

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al TANF applicant individually for the second year of a program's operation based on the applicant's proposed administrative cost allocation. No Tribal TANF grantee may expend more than 30 percent of its TFAG for administrative costs during the second year.

(c) ACF will negotiate a limitation on administrative costs with each Tribal TANF applicant individually for the third and all subsequent years of a program's operation based on the applicant's proposed administrative cost allocation. As negotiated, a Tribal TANF grantee may not expend more than 25 percent of its TFAG for administrative costs during any subsequent grant period.

(1) For the purposes of determining administrative costs, Tribes with approved plans who have been operating Tribal TANF programs prior to the effective date of this regulation will be able to negotiate a reasonable adjustment in their approved administrative cost rate, not to exceed the limitations in the Final Rule delineated above.

(2) [Reserved]

(d) ACF will negotiate limitations on administrative costs based on, but not limited to, a Tribe's TANF funding level, economic conditions, and the resources available to the Tribe, the relationship of the Tribe's administrative cost allocation proposal to the overall purposes of TANF, and a demonstration of the Tribe's administrative capability.

§ 286.55 What types of costs are subject to the administrative cost limit on Tribal Family Assistance Grant funds?

(a) Activities that fall within the definition of "administrative costs" at § 286.5 are subject to the limit determined under § 286.50.

(b) Information technology and computerization for tracking, data entry and monitoring, including personnel and other costs associated with the automation activities needed for Tribal TANF monitoring, data entry and tracking purposes, are excluded from the administrative cost cap, even if they fall within the definition of "administrative costs."

(c) Designing, administering, monitoring, and controlling a sample are

not inherent parts of information technology and computerization and, thus, costs associated with these tasks must be considered administrative costs.

(d) Indirect Costs negotiated by BIA, the Department's Division of Cost Allocation, or another federal agency must be considered to be part of the total administrative costs.

§ 286.60 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

(a) No. A Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance under the Tribal TANF program.

(b) A Tribe may expend funds beyond the fiscal year in which awarded only on benefits that meet the definition of assistance at § 286.10 or on the administrative costs directly associated with providing that assistance.

Subpart C—Tribal TANF Plan Content and Processing

§ 286.65 How can a Tribe apply to administer a Tribal Temporary Assistance For Needy Families (TANF) Program?

(a) Any eligible Indian tribe, Alaska Native organization, or intertribal consortium that wishes to administer a Tribal TANF program must submit a three-year TFAP to the Secretary of the Department of Health and Human Services. The original must be submitted to the appropriate ACF Regional Office with a copy to the ACF Central Office.

(b) A Tribe currently operating a Tribal TANF program must submit to the appropriate ACF Regional Office, with a copy to the ACF Central Office, no later than 120 days prior to the end of the three-year grant period, either—

(1) A letter of intent, with a copy to the affected State or States, which specifies they do not intend to continue operating the program beyond the end of the three-year grant period; or

(2) A letter of intent, with a copy to the affected State or States, which specifies they intend to continue program operations with no changes to

the geographic service area or service population; or

(3) A new three-year plan which indicates a change in either the geographic service area or service population.

(c) For Tribes choosing option (b)(2) above, a new three-year plan must be submitted to the appropriate ACF Regional Office, with a copy to the ACF Central Office, no later than 60 days before the end of the current three-year grant period.

§ 286.70 Who submits a Tribal Family Assistance Plan?

(a) A TFAP must be submitted by the chief executive officer of the Indian tribe and be accompanied by a Tribal resolution supporting the TFAP.

(b) A TFAP from a consortium must be forwarded under the signature of the chief executive officer of the consortium and be accompanied by Tribal resolutions from all participating Tribes that demonstrate each individual Tribe's support of the consortium, the delegation of decision-making authority to the consortium's governing board, and the Tribe's recognition that matters involving operation of the Tribal TANF consortium are the express responsibility of the consortium's governing board.

(c) When one of the participating Tribes in a consortium wishes to withdraw from the consortium, the Tribe needs to both notify the consortium and the Secretary of this fact.

(1) This notification must be made at least 120 days prior to the effective date of the withdrawal.

(2) The time frame in paragraph (c)(i) of this section is applicable only if the Tribe's withdrawal will cause a change to the service area or population of the consortium.

(d) When one of the participating Tribes in a consortium wishes to withdraw from the consortium in order to operate its own Tribal TANF program, the Tribe needs to submit a Tribal TANF plan that follows the requirements at § 286.75 and § 286.165.

§ 286.75 What must be included in the Tribal Family Assistance Plan?

(a) The TFAP must outline the Tribe's approach to providing welfare-